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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1281

C. E. GRAY, J. C. PITTS AND FLOYD BROWN,
PETITIONERS

v.

COMMODITY CREDIT CORPORATION, A CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of California (R. 105-142) is reported at 63 F. Supp. 386. The opinion of the Circuit Court of Appeals for the Ninth Circuit (R. 155-157) is reported at 159 F. 2d 243.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 28, 1947 (R. 157). The petition for a writ of certiorari was filed on April 23, 1947. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of

the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the court below erred in interpreting a contract entered into between respondent, as purchaser, and petitioners and several thousand other growers of Muscat and other raisin variety grapes, as sellers, as providing for the distribution of the proceeds to be derived from the resale of those grapes among all growers of raisin variety grapes *pro rata* in accordance with their production and regardless of the particular variety from which the proceeds were derived.¹

2. Whether petitioners have the standing to question the constitutionality of this common pool method of distribution.

3. Whether, if so, that program of distribution violates any provision of the Constitution.²

¹ For purposes of convenience, this method of distribution will be referred to as the common pool method, as contrasted with the separate variety pool method, urged by petitioners, under which the proceeds would be segregated into separate funds dependent on variety, and each fund distributed only to the growers of the particular variety contributing to the fund.

² Minor questions involved are:

4. Whether the producers of varieties of grapes other than the Muscat variety are indispensable parties, in whose absence petitioners cannot maintain this suit.

5. Whether petitioners are, in any event, entitled to invoke the relief of a court of equity.

STATEMENT

This case turns on the interpretation of Section 5 of a standard form of contract (R. 9-22) entered into between respondent, as purchaser, and several thousand growers of Muscat and other raisin variety grapes, as sellers.^{*} The genesis of the contract is to be found in the 1944 raisin program of the War Food Administration, of which respondent was a corporate agency. The facts which underlay its adoption, all stipulated below, are substantially as follows:

1. *The 1944 raisin program.* Raisins produced in this country are made almost exclusively from the Muscat, Thompson, and Sultana varieties of grapes—the “raisin variety grapes”—and through the natural process of sun-drying. Grapes so dried become “natural condition raisins” and are then sold to packers for stemming, cleaning, and, in some instances, seeding. Grapes so treated are “processed raisins.” Because of their high nutritional value, their relative non-perishability, and the ease with which they can be packed and shipped, raisins (and Zante Currants) are an essential wartime food item, of greater importance than fresh grapes (R. 41-44).

To stimulate the production of the raisin variety grapes needed for military and civilian

^{*} Section 5 of the contract is set out in the Appendix, *infra*, pp. 22-23.

raisin requirements in 1944, the War Food Administrator, on June 1, 1944, announced grower support prices on natural condition raisins of \$180.00 per ton for Thompsons and Sultanas, and \$195.00 per ton for Muscats. These support prices were fixed at the same levels as the ceiling prices established by the Office of Price Administration on grower or producer sales of natural condition raisins. In order to enable packers to pay such prices to growers and still secure reasonable profits on the resale of processed raisins, respondent entered into a program of subsidy payments to packers. All growers of raisin variety grapes, including petitioners, were thus assured of obtaining the ceiling prices for the natural condition raisins they produced from their grapes (R. 44-47).

In addition, since utilization of raisin variety grapes, as before, for purposes other than for raisin production—principally for beverage and table uses—would have meant a shortage for the essential raisin use, regulation of their disposition and use became necessary. Accordingly, on July 20, 1944, the War Food Administrator issued Amendment 5 to War Food Order 17 (9 F. R. 8768),⁴ placing restrictions on the sale, delivery, purchase, and use of the 1944 crop of raisin variety grapes and Zante Currants (R. 47-51, 64-65). The order imposed no limitation

⁴ This order is set out in the Appendix, *infra*, pp. 23-29.

on the conversion of raisin variety grapes into raisins by sun-drying, or on sales to dehydrators for such conversion, but, except as hereafter indicated, it did not permit any other disposition of raisin variety grapes by the grower. This restriction was designed to ensure that grapes would be devoted to raisin uses to the maximum extent possible (R. 63, 64-65).

It was recognized that there would be some raisin variety grapes which, either because of their condition or for other reasons, would not be converted or convertible into raisins. To permit the unrestricted sale of that residue, however, would have involved danger of diversion of grapes actually needed for raisins. Section 1407.2 (b) (1) of War Food Order 17, accordingly, permitted the sale of such grapes only to the Office of Distribution of the War Food Administration or to a corporate agency thereof, such as respondent. Thus, though an outlet was provided for growers, control was maintained over the disposition of grapes for non-raisin use (R. 63-65). A grower, therefore, had three principal legal alternatives under the Order:

- (1) to convert his grapes into raisins and to sell them in that form;
- (2) to sell them to a dehydrator for conversion into raisins; or
- (3) to sell them to the Office of Distribution.

To provide the third outlet mentioned, respondent undertook to purchase from growers who could not or did not wish to utilize either of the first two outlets: (a) raisin variety grapes not suitable for conversion into standard quality raisins; (b) damaged or substandard quality raisins; and (c) such quantities of raisin variety grapes as might be produced in excess of the amount determined by the War Food Administration to be needed for conversion into raisins (R. 63-64). Under the purchase program, growers, including petitioners, who wished to dispose of their grapes other than by sun-drying into raisins or by sale to dehydrators, made application to the War Food Administration Office in Fresno, California. If the War Food Administration approved, the applicant grower went to the office of respondent's agent and there signed the standard contract (R. 9-22); all growers who sold to respondent, including petitioners, followed the same procedure and signed identical contracts (R. 62-71).

Respondent entered into over 2,000 such contracts with growers. Only one contract was signed with each grower; it covered all the grapes he was to sell to respondent, regardless of whether they included one or more varieties. Approximately 12% of the contracting growers sold Sultanas, 27% sold Thompsons, and the remainder sold Muscats. The prices paid to the growers was \$43.00 per fresh ton for Thompsons and Sultanas, and \$50.00 per fresh ton for Muscats, the

equivalent, on a conversion basis, to the O. P. A. ceiling prices for grower sales of natural condition raisins of the same variety, and to the highest prices paid by dehydrators and dry-yard operators for fresh grapes sold to them (R. 72-79).

Respondent resold the grapes which it purchased under these contracts, principally to wineries, at prices in excess of those it paid for them. Resales were made on the basis of bids solicited and received by respondent, and bidders had no knowledge of the quantity of each variety available for resale. The bids received showed no substantial difference in demand (either on a price or a quantity basis) among the several varieties of grapes so resold, winery bids for Muscats averaging not more than \$5.00 per ton higher than for Thompsons; and, so far as quantity was concerned, the demand for Muscats was only slightly greater than that for Thompsons. From these resales of grapes, respondent realized net proceeds of approximately \$8,850,000.00 (R. 74-77). These proceeds constitute the fund referred to in Section 5 of the contract (R. 13-15), with reference to whose disposition the principal issues here arise.

2. The necessity for the 1944 raisin program.

The war necessity for imposing these restrictions on the disposition and use of raisin variety grapes arose from the following circumstances:

Prior to the institution, in 1942, of Government war controls on the disposition of raisin

variety grapes, there was no large or consistent difference in the prices paid for such grapes by various trade outlets and for various uses. Prices varied from year to year, by variety and by utilization, but the maximum variation among varieties and utilization in any one year never exceeded about \$5.00 per ton and averaged considerably less (R. 51-54). With the imposition of controls in 1942, the quantity and proportion of such grapes going into non-raisin channels was reduced (R. 58-59), and, as a result, grapes sold for non-raisin use could command substantially higher prices than those paid for raisins (on a conversion basis) or for grapes sold to raisin channels (R. 60-61). On the other hand, the ceiling prices on natural condition raisins were limiting factors, as a practical marketing proposition, both on the returns which growers could realize for drying their grapes and on the prices which dehydrators and other purchasers were willing to pay for grapes acquired for conversion into raisins (R. 72-73). Thus a large disparity arose and could reasonably be anticipated between the returns obtainable by a grower who converted his grapes into raisins or who sold them for such conversion, and the return which could be obtained for sales to non-raisin outlets (R. 61-62).

This disparity, if ignored, would have encouraged the diversion of grapes from raisin to non-

raisin uses and would have prejudiced a grower whose grapes were utilized for the essential raisin use as against one whose wartime grapes were ultimately diverted to the less important uses (R. 65-66). These two related factors created a very serious problem in connection with the operation of the 1944 raisin program, for that program necessarily depended on the avoidance of precisely such a diversion. The problem was discussed at Government and trade conferences held in Washington, D. C., and Fresno, California, during the spring and summer of 1944, and the Raisin Industry Advisory Committee recommended as a remedy that any proceeds derived by respondent from the resale of grapes acquired from growers should be pooled and distributed equally among all growers, in proportion to their production of grapes. When it made this recommendation, the Committee specifically rejected a proposal by a Muscat grower that the profits on the sale of each variety of grapes be kept in a separate pool and be distributed only among growers of that particular variety. (R. 61-62). This rejected proposal is in substance the equivalent of petitioners' interpretation of Section 5 of the contract.

Against this background, the War Food Administration and respondent approved and adopted the purchase program and the provisions of Section 5 of the contract. The common pool

feature was designed: (a) to avoid a situation in which it would be relatively disadvantageous for a grower to dispose of his grapes (or Zante Currants) in raisin channels; (b) to eliminate any financial incentive to divert grapes from raisin channels; and (c) to avoid the possibility that a grower of raisin variety grapes whose grapes were devoted to the essential raisin use would derive a smaller relative financial return than one whose grapes were devoted to a less important non-raisin use, in consequence of the market price differential favoring non-raisin uses (R. 65-66). Since all proceeds were to be pooled and distributed ratably among growers in proportion to production, a grower would neither gain nor lose by drying his grapes, as War Food Order 17 contemplated. He would therefore have no incentive to divert his grapes from the essential raisin use and could derive no artificial windfall from such diversion.

Section 5 also provides that the proceeds in the fund shall be first applied to the incentive payment to producers of sun-dried raisins, of \$10.00 for each ton of sun-dried raisins produced. This provision was adopted as part of the co-operative effort to secure the maximum conversion of grapes into raisins by sun-drying (R. 65), the additional labor and expense of sun-drying and the possibility of loss or damage due to hazards in the drying process (R. 42) being factors

which might have discouraged sun-drying, had this compensatory provision not been included.

As previously indicated, all growers who sold grapes to respondent did so only after first applying to the War Food Administration and then signing the standard form contract (R. 64). All of them followed the procedure described at R. 67-71. All growers, including petitioners, who signed the contracts have made application for payment of the purchase prices for the grapes they sold to respondent and, with exceptions not here material, all have been paid (R. 73-74). In addition, the petitioners Pitts and Brown, who were eligible for incentive payments under the contract, have applied for and received such payments (R. 78). Taking the program as a whole, the incentive payments made up to June 2, 1945, covered approximately 99% of the total eligible raisin tonnage, and payments were still being made at that date (R. 77).

3. *The proceedings below.* The present case, originally brought in the Superior Court of the State of California, was removed to the United States District Court for the Southern District of California (R. 28-29). The case was then argued and submitted on the complaint (R. 2-24), the answer (R. 31-41), and the Stipulation of Facts (R. 41-103). On November 1, 1945, the District Court, per Yankwich, J., handed down a comprehensive opinion (R. 105-142, 63 F. Supp. 386),

holding that the contracts in question were valid and did not violate petitioners' constitutional rights; that the Section 5 fund should be paid out according to the common pool method of distribution; that the Muscat growers were not entitled to have that portion of the fund derived from the sale of their grapes distributed to them as a separate pool; that petitioners, having entered into agreements for the sale of their grapes, and having thereafter accepted benefits thereunder, could not question the validity of those contracts. Judgment dismissing the complaint was accordingly entered on November 23, 1945 (R. 143-145).

Petitioners thereupon appealed to the United States Court of Appeals for the Ninth Circuit (R. 145-146), and on January 28, 1947, that court announced its *per curiam* opinion (R. 155-157), and entered a decree (R. 157) affirming the judgment of the District Court. The Circuit Court adopted Judge Yankwich's opinion, and, as an additional reason for affirmance, noted that respondent had recognized and fully compensated petitioners for the difference in value between the Muscat and other grape varieties, by paying petitioners and the other Muscat growers \$7.00 per ton more for their grapes (R. 156).

ARGUMENT

The decisions below are clearly correct. Nor do they conflict with any prior decisions of this Court, as petitioners suggest (Pet. 6). To the

contrary, the constitutional question sought to be raised here was decided unequivocally and adversely to petitioners, in *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533. Review by this Court is, therefore, not warranted.

1. It is plain that Section 5 of the contract involved here (R. 13-15; *infra*, pp. 22-23) contemplates distribution of the proceeds derived from the resale of petitioners' and the other growers' grapes on a common, rather than on a separate variety pool basis. As Judge Yankwich put it, "Either Section 5 of contract means this or it means nothing else" (R. 121; 63 F. Supp. at 392).

The provisions for distribution are quite definite. The distinction between grape varieties is recognized only for one purpose, so far as distribution of the surplus fund is concerned: different conversion factors are established for grapes sold to dehydrators for each variety to take account of the difference in weight loss encountered by the several varieties in the drying process (R. 15). In all other respects, the grapes, whatever their variety, are treated as a single class, and there is not the faintest suggestion in Section 5 of any intention to segregate the proceeds derived from resales of each variety into separate funds.

Moreover, several extrinsic facts show that the common pool interpretation is entirely in accordance with intention and purpose. A proposal made by a Muscat grower that a separate fund

be created for each variety was rejected by the Industry Advisory Committee (R. 62). The announcement made by the War Food Administration describing the 1944 raisin program (R. 90-92) states that grapes purchased would be resold to the best advantage of "producers" and that the "net sales proceeds" would be distributed "among raisin variety grape producers affected by the order." Further, a grower shares in the pool regardless of whether he sold his grapes to ap- pellee or sun-dried all of them; petitioners concede this (Pet. 10-11, 16-17). Consequently, under petitioners' interpretation of Section 5, as between a Muscat and a Thompson grower, each of whom sun-dried all of his grapes, the Muscat grower would receive a larger distributive share of the proceeds, quite apart from the \$7.00 premium originally paid to him upon purchase by respondent—despite the fact that no part of the proceeds of the surplus fund was derived from a resale of the grapes of either of these two growers. There is obviously no rational basis for such a result.

2. The common pool method of distribution provided by Section 5 of the contract involves no deprivation of property and raises no substantial constitutional question.

a. Since raisins were an essential item of food in meeting military and civilian wartime needs, the War Food Administration, acting under Executive Order 9280 (7 F. R. 10179) and Executive

Order 9334 (8 F. R. 5423) (which delegated to it the allocation authority of the President under Section 301 (a) of the Second War Powers Act, March 27, 1942, c. 199, Tit. III, § 301, 56 Stat. 177; 50 U. S. C. App., Supp. V, 633), was clearly justified in prohibiting the sale of raisin variety grapes for non-raisin use, thus securing an adequate production of raisins. The restrictions imposed by War Food Order 17 were therefore well within the war power of the United States and plainly constitutional. *Highland v. Russell Car & Snow Plow Co.*, 279 U. S. 253; *L. P. Stewart & Bro. v. Bowles*, 322 U. S. 398.

b. Moreover, as the District Court found (R. 130, 135-136; 63 F. Supp. at 396, 399-400), since the Government's program assured petitioners at least the equivalent of the ceiling prices for their grapes, it caused them no injury and involved no deprivation. And constitutional protections are not impaired by action which produces no injury. *Gorieb v. Fox*, 274 U. S. 603, 606; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 544-545; *Currin v. Wallace*, 306 U. S. 1, 18. Petitioners lost, at most, an opportunity to obtain an additional profit through the non-permissible diversion of grapes from raisin use to less essential non-raisin uses. Injury cannot be found in that circumstance. Cf. *Ruppert v. Caffey*, 251 U. S. 264; *Perry v. United States*, 294 U. S. 330, 357, 358; *Nortz v. United States*, 294 U. S. 317, 330.

c. Nor do any due process considerations support petitioners' objections to the common pool method of distribution. *United States v. Rock Royal Co-Operative, Inc.*, 307 U. S. 533. There, in order to meet the problems arising from the facts that milk commanded different prices for different utilizations, fluid milk being the most profitable outlet, and that, in consequence, there was sharp competition in the fluid milk market which itself tended to drive prices down, the Government's order provided for a pooling of returns, so that all producers ultimately received uniform prices for their milk regardless of the uses for which it was sold. This equalization pool was attacked on due process grounds, the defendant objecting to it as an ancillary feature of the minimum price regulation. In sustaining the validity of the pool against defendant's contentions, this Court said (307 U. S. at 572, 573):

* * * *The pool is only a device reasonably adapted to allow regulation of the interstate market upon terms which minimize the results of the restrictions.* * * *

Common funds for equalizing risks are not unknown and have not been considered violative of due process. The pooling principle was upheld in workmen's compensation, bank deposit insurance, and distribution of benefits in the Transportation Act.

* * * In this case, the pooling has differentials to cover the variations of quality and location. [Italics supplied.]

We submit that the *Rock Royal* case is completely dispositive of the constitutional issues involved in the present proceeding.⁵ In both cases, in order to aid in effectuating a valid restriction and to mitigate the inequitable incidents thereof, a pool was created so that all producers would be treated alike. In both, fortuitous advantages were eliminated. There, as here, particular producers lost the benefits of the additional profits they might have made through sales to more profitable outlets. A device which can be validly adopted in aid of industry stabilization in peace is surely not less available in aid of the allocation power in time of war. See, also, *Noble State Bank v. Haskell*, 219 U. S. 104; *New England Divisions Case*, 261 U. S. 184; *Dayton-Goose Creek Ry. Co. v. United States*, 263 U. S. 456, 484; *Carmichael v. Southern Coal Co.*, 301 U. S. 495, 521. And cf. *Mulford v. Smith*, 307 U. S. 38; *Wickard v. Filburn*, 317 U. S. 102.⁶

⁵ *Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55, and *Railroad Retirement Board v. Alton R. Co.*, 295 U. S. 330, notwithstanding petitioners' suggestion to the contrary (Pet. 6), are no more in conflict with the decisions below in this case than they were with this Court's ruling in *Rock Royal*, where they were clearly distinguished. See 307 U. S. at 573.

⁶ In *Wickard v. Filburn*, 317 U. S. 111, 131, 133, this Court said:

"* * * We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes.

3. In any event, as the District Court held (R. 130-133; 63 F. Supp. at 396-398), petitioners have no standing to maintain this action. They made application under War Food Order 17 for permission to dispose of their grapes other than by the permissible courses of sun-drying or sale to raisin channels. They were all then authorized, under the order, to sell their grapes to respondent. The approval of such sales opened to them a legally permissible alternative outlet, under the order, for grapes which they could not or did not wish to move into essential raisin channels. They utilized the outlet so made available to them by contracting with and delivering their grapes to respondent. Having made application under the order, having relied on its provisions, and having accepted the benefit of the approval thereunder of a non-raisin outlet for their grapes, petitioners, on well-established principles, may not now attack its validity. *Moor v. Texas & N. O. R. Co.*, 75 F. 2d 386 (C. C. A. 5), appeal dismissed, 297 U. S. 101; *American Bond & Mortgage Co. v. United States*, 52 F. 2d 318 (C. C. A. 7), certiorari denied, 285 U. S. 538; *North Dakota-Montana Wheat Growers' Association v. United States*, 66 F. 2d 573 (C. C. A. 8), certiorari denied, 291 U. S.

"* * * That appellee is the worse off for the aggregate of this legislation does not appear; it only appears that, if he could get all that the Government gives and do nothing that the Government asks, he would be better off than this law allows. To deny him this is not to deny him due process of law." [Italics supplied.]

672; *Wall v. Parrot Silver & Copper Co.*, 244 U. S. 407; *St. Louis Co. v. Prendergast Construction Co.*, 260 U. S. 469; *Hurley v. Commission of Fisheries*, 257 U. S. 223; cf. *Booth Fisheries v. Industrial Commission*, 271 U. S. 208, 211; *United States v. Golden Gate Bridge & Highway District*, 37 F. Supp. 505 (N. D. Calif.), affirmed, 125 F. 2d 872 (C. C. A. 9), certiorari denied, 316 U. S. 700. Actually, had petitioners made no specific application under War Food Order 17, their entry into the contracts with and deliveries of grapes to respondent, as permitted by Section 1407.2 (b) (1) of the order, would itself have constituted a complete election to accept and to proceed under the order. *E. I. du Pont de Nemours & Co., Inc. v. Hughes*, 50 F. 2d 821 (C. C. A. 3); see also, *American Smelting & Refining Co. v. United States*, 259 U. S. 75; *Morrisdale Coal Co. v. United States*, 259 U. S. 188.

Contrary to petitioners' contention (Pet. 19-20), no duress can be implied from the circumstances involved. That petitioners may have been yielding to the economic need for finding an alternative outlet for their grapes, owing to their unwillingness or inability to sun-dry them or to sell them to dehydrators, does not constitute unlawful duress, as Judge Yankwich aptly noted (R. 134-136; 63 F. Supp. at 399-400). Any such contention ignores the very basis of decision in cases dealing with estoppels of this character. *Moor*

v. Texas & N. O. R. Co., 75 F. 2d 386 (C. C. A. 5), appeal dismissed, 297 U. S. 101; *American Bond & Mortgage Company v. United States*, 52 F. 2d 318 (C. C. A. 7), certiorari denied, 285 U. S. 538; *Yarnell v. Hillsborough Packing Company*, 70 F. 2d 435 (C. C. A. 5); cf. *American Smelting & Refining Co. v. United States*, 259 U. S. 75; *White Oak Coal Co. v. United States*, 15 F. 2d 474 (C. C. A. 4), certiorari denied, 273 U. S. 756; *Morrisdale Coal Co. v. United States*, 259 U. S. 188; *E. I. duPont de Nemours & Co., Inc. v. Hughes*, 50 F. 2d 821 (C. C. A. 3).

The real answer, of course, is that petitioners are not in any sense rejecting the contract whose validity they here impugn. They accepted it, they proceeded under it, and they were paid for their grapes under it; they now assert a right to incentive payments under it and rely on it for purposes of distribution of the proceeds. As this Court said, in *Z. & F. Assets Corp. v. Hull*, 311 U. S. 470, 486:

But as their standing rests solely upon the provisions of the Act, they may not escape its terms or succeed in a challenge to payments for which the Act is found to provide.

CONCLUSION

The decision below is clearly correct and there is no conflict. The constitutional contention is not substantial. It is therefore respectfully submitted

that the petition for a writ of certiorari should be denied.

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MAY 1947.

APPENDIX

1. Section 5 of standard form Government contract entered into between petitioners and the Commodity Credit Corporation reads as follows:

SECTION 5. Profits. The proceeds derived by Commodity from the sales of Grapes and Raisins purchased by Commodity under this and similar Producers Agreements with respect to Grapes and Raisins produced in 1944 or converted into Raisins in 1944 shall be used to defray the cost of such Grapes and Raisins and incidental expenses thereto, including but not limited to inspection and transportation costs and to pay the expenses incurred by Commodity or its agencies in the acquisition and disposition of such Grapes and Raisins and the remainder shall be distributed in the following manner and order of priority:

1. An incentive payment at the rate of \$10 per ton shall be made to each Producer of sun dried raisins (not including sulphur bleached and soda bleached raisins) and each Producer of Zante Currants for the quantity of such sun dried raisins and Zante Currants produced in 1944 and sold to Packers prior to March 1, 1945, provided, however, that if the available fund is insufficient to make payments at the rate of \$10 per ton, such fund will be distributed to such Producers on a pro rata basis.

2. The balance of the fund, if any, will be distributed pro rata on fresh tonnage basis to all Growers of raisin variety grapes and Zante Currant grapes grown in 1944,

Kern, Kings, Tulare, Fresno, Madera, Merced, Stanislaus, and San Joaquin Counties in the State of California; the number of tons determined to have been produced by each Grower will include only grapes which have been converted into raisins or Zante Currants and sold to Packers prior to March 1, 1945. Grapes sold to dehydrators for conversion into raisins. Grapes substandard or damaged Grapes and Raisins sold to WFA, and Grapes sold to canneries to be used in the manufacture of fruit cocktail. The conversion factor for California and Thompson Seedless raisins to fresh grapes will be 1 to 4; muscats 1 to 3.75; Zante Currants 1 to 6. Partially dried substandard raisins will be converted to green tons by dividing the price paid by commodity for a given lot by the applicable price in Schedule A at 79% moisture and multiplying that figure by the number of tons in the lot.

Amendment 5 to War Food Order 17 (9-2-68), War Food Administration, is as follows:

WFO 17 Amdt. JULY 20, 1944.

WAR FOOD ADMINISTRATION

(WFO 17, Amdt. 5)

PART 1407—DRIED FRUIT

Raisin Variety Grapes, Zante Currant Grapes, Raisins, and Zante Currants

War Food Order No. 17, as amended, E. R. 4321, 4319 (formerly designated as Food Distribution Order No. 17, as originally issued by the Secretary of Agriculture

on January 30, 1943, and as amended, 8 F. R. 1706, 12042), is further amended to read as follows:

§ 1407.2. Restrictions relative to raisin variety grapes. Zante Currant grapes, raisins, and Zante Currants—(a) Definitions. (1) "Person" means any individual, partnership, corporation, association, business trust, or any organized group of persons, whether incorporated or not.

(2) "Director" means the Director of Distribution, War Food Administration.

(3) "Raisin variety grapes" means Thompson Seedless, Muscat, and Sultana grapes, grown in Fresno, Kern, Kings, Madera, Merced, Stanislaus, San Joaquin or Tulare Counties in the State of California, in the fresh or partially dried form.

(4) "Zante Currant grapes" means the grapes of the Zante Currant variety, grown in Fresno, Kern, Kings, Madera, Merced, Stanislaus, San Joaquin, or Tulare Counties in the State of California, in the fresh or partially dried form.

(5) "Raisins" means raisin variety grapes preserved by the removal of a part of the natural moisture, and includes such fruit in the processed or unprocessed condition.

(6) "Zante Currants" mean Zante Currant grapes preserved by the removal of a part of the natural moisture, and includes such fruit in the processed or unprocessed condition.

(7) "Processing" means grading, sizing, stemming, seeding, or treating raisins or Zante Currants by the use of water, steam, chemicals, or compressed or hot air.

(8) "Producer" means any person engaged in the production of raisin variety

grapes or Zante Currant grapes; and such terms includes, but is not limited to, any owner of such grapes at the time of the harvesting or picking of such grapes.

(9) "Packer" means any person engaged in the business of processing and packaging raisins or Zante Currants.

(10) "Dehydrator" means any person engaged in the business of drying raisin variety grapes or Zante Currant grapes by the use of artificial heat or by sun drying.

(b) Restrictions. (1) No producer may sell or deliver any raisin variety grapes or any Zante Currant grapes, except to (i) the Office of Distribution (including, but not being limited to, any corporate agency thereof), or (ii) any person designated by the Director, or (iii) any dehydrator for the purpose of converting such grapes into raisins or Zante Currants. No producer may, unless specifically authorized by the Director, use more than 100 pounds of raisin variety grapes or Zante Currant grapes during each calendar year for any purpose other than for conversion into raisins or Zante Currants.

(2) No person may, unless specifically authorized by the Director, purchase or accept delivery of any raisin variety grapes or any Zante Currant grapes for any purpose other than for conversion into Raisins or Zante Currants.

(3) No person may, unless specifically authorized by the Director, purchase, accept delivery of, or use any raisins or any Zante Currants for conversion into alcohol, brandy, wine, any other beverage (whether alcoholic or not), any concentrate, any syrup, or any non-food product or non-food byproduct.

(4) No person may sell any raisins or any Zante Currants for conversion into alcohol, brandy, wine, any other beverage (whether alcoholic or not), any concentrate, any syrup, or any non-food product or non-food byproduct except to (i) the Office of Distribution (including, but not being limited to, any corporate agency thereof), or (ii) any person designated by the Director.

(5) On March 1 of each year each person, other than a packer, shall, without regard to existing contracts, set aside for delivery to the Office of Distribution, or any person designated by the Director, all of the unprocessed raisins produced in the then immediately preceding calendar year, or owned by or under contract to, such person on said date, and hold such unprocessed raisins so set aside for a period of one year thereafter unless, during such period, said unprocessed raisins are acquired by the Office of Distribution or a person designated by the Director.

(6) No person may sell or deliver any raisin variety grapes, any Zante Currant grapes, any raisins, or any Zante Currants with knowledge or reason to believe that such quantity, or any portion thereof, thus sold or delivered is to be used in violation of this order.

(7) No dehydrator shall convert any raisin variety grapes into raisins by any method other than sun drying, unless specifically authorized by the Director.

(c) Audits and inspections. The Director shall be entitled to make such audit or inspection of the books, records and other writings, premises or stocks of raisin variety grapes, Zante Currant grapes, raisins, and Zante Currants of any person, and to

make such investigations, as may be necessary or appropriate, in the Director's discretion, to the enforcement or administration of the provisions of this order.

(d) Records and reports. (1) The Director shall be entitled to obtain such information from, and require such reports and the keeping of such records by, any person, as may be necessary or appropriate, in the Director's discretion, to the enforcement or administration of the provisions of this order.

(2) Every person subject to this order shall, for at least two years (or for such period of time as the Director may designate), maintain an accurate record of his transactions in raisin variety grapes, Zante Currant grapes, raisins, and Zante Currants.

(e) Petition for relief from hardship. Any person affected by this order who considers that compliance herewith would work an exceptional or unreasonable hardship on him may file a petition for relief with the Order Administrator. Such petition shall be addressed to Order Administrator, War Food Order No. 17, Fruit and Vegetable Branch, Office of Distribution, War Food Administration, Washington 25, D. C. Petition for such relief shall be in writing and shall set forth all pertinent facts and the nature of the relief sought. The Order Administrator may take any action with reference to such petition which is consistent with the authority delegated to him by the Director. If the petitioner is dissatisfied with the action taken by the Order Administrator on the petition, he shall obtain, by requesting the Order Administrator therefor, a review of such action by the

Director. The Director may, after said review, take such action as he deems appropriate, and such action shall be final. The provisions of this paragraph (e) shall not be construed to deprive the Director of authority to consider originally any petition for relief from hardship submitted in accordance herewith. The Director may consider any such petition and take such action with reference thereto that he deems appropriate, and such action shall be final.

(f) Violations. Any person who violates any provision of this order may, in accordance with the applicable procedure, be prohibited from receiving, making any deliveries of, or using the material subject to priority or allocation control pursuant to this order. In addition, any person who wilfully violates any provision of this order is guilty of a crime and may be prosecuted under any and all applicable laws. Further, civil action may be instituted to enforce any liability or duty created by, or to enjoin any violation of, any provision of this order.

(g) Delegation of authority. The administration of this order and the powers vested in the War Food Administrator, insofar as such powers relate to the administration of this order, are hereby delegated to the Director. The Director is authorized to redelegate to any employee of the United States Department of Agriculture any or all of the authority vested in him by this order.

(h) Communications. All reports required to be filed hereunder and all communications concerning this order shall, unless otherwise provided herein or in instructions issued by the Director, be ad-

addressed to the Director of Distribution, War Food Administration, Washington 25, D. C., Ref. WFO-17.

(i) Effective date. This order shall become effective at 12:01 a. m., p. w. t., July 21, 1944. With respect to violations, rights accrued, liabilities incurred, or appeals taken under said War Food Order No. 17, as amended, prior to the effective time of the provisions hereof, the provisions of said War Food Order No. 17, as amended, in effect prior to the effective time hereof shall be deemed to continue in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with regard to any such violation, right, liability, or appeal.

Note: All record-keeping requirements of this order have been approved by, and subsequent reporting and record-keeping requirements will be subject to the approval of, Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(E. O. 9280, 7 F. R. 10179; E. O. 9322, 8 F. R. 3807; E. O. 9334, 8 F. R. 5423; E. O. 9392, 8 F. R. 14783.)

Issued this 20th day of July, 1944.

ASHLEY SELLERS,
Acting War Food Administrator.